

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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IN RE:

MDL No. 2859

ZIMMER M/L TAPER HIP PROSTHESIS OR M/L TAPER  
HIP PROSTHESIS WITH KINECTIV TECHNOLOGY AND  
VERSYFEMORAL HEAD PRODUCTS LIABILITY  
LITIGATION

18-MD-2859 (PAC)  
18-MC-2859 (PAC)

**SHORT FORM  
COMPLAINT**

*This Document Relates to All Actions*

**Individual Case No.  
1:19-cv-06258**

*Marjorie A. Gajeski & Peter T. Gajeski v. Zimmer, Inc., Zimmer  
US, Inc., Zimmer Biomet Holdings, Inc. f/k/a Zimmer Holdings,  
Inc.*

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1. Plaintiff(s), Marjorie A. Gajeski and Peter T. Gajeski, state(s) and bring(s) this civil action in MDL No. 2859, entitled *In Re: Zimmer M/L Taper Hip Prosthesis or M/L Taper Hip Prosthesis with Kinectiv Technology and Versys Femoral Head Products Liability Litigation*, against Defendants Zimmer, Inc., Zimmer US, Inc., and Zimmer Biomet Holdings, Inc.

2. Plaintiff(s) is filing this Short Form Complaint as permitted by this Court's Case Management Order 9, dated February 7, 2019, and hereby incorporates the Master Long Form Complaint filed in MDL No. 2859 by reference.

**PARTIES, JURISDICTION AND VENUE**

3. Plaintiff, Marjorie A. Gajeski, is a resident and citizen of the State of Massachusetts and claims damages as set forth below.

4. Plaintiff's Spouse, Peter T. Gajeski, is a resident and citizen of the State of Massachusetts, and claims damages as set forth below. *[Cross out Spousal Claim if not applicable.]*

5. Venue of this case is appropriate in the United States District Court, District of Massachusetts. Plaintiff states that but for the Order permitting directly filing into the Southern District of New York pursuant to Case Management Order 9, Plaintiff would have filed in the United States District Court, District of Massachusetts. Therefore, Plaintiff respectfully requests that at the time of transfer of this action back to the trial court for further proceedings that this case be transferred to the above referenced District Court.

6. Plaintiff brings this action [*check the applicable designation*]:

  X   On behalf of himself/herself;  
       ~~In a representative capacity as the \_\_\_\_\_ of the \_\_\_\_\_ having been  
duly appointed as the \_\_\_\_\_ by the \_\_\_\_\_ Court of \_\_\_\_\_. A copy  
of the Letters of Administration for a wrongful death claim is annexed  
hereto if such letters are required for the commencement of such a claim  
by the Probate, Surrogate or other appropriate court of the jurisdiction of  
the decedent. [Cross out if not applicable.]~~

### **FACTUAL ALLEGATIONS**

#### **ALLEGATIONS AS TO RIGHT-SIDE IMPLANT/EXPLANT SURGERY(IES): [CROSS OUT IF NOT APPLICABLE]**

7. Plaintiff was implanted with a Versys Femoral Head in his/her right hip on or about November 4, 2015 (date), at the Beverly Hospital, 85 Herrick Street (medical center and address), in Beverly, Massachusetts, by Dr. Hugh O'Flynn.

8. Plaintiff was implanted with the following femoral stem during the November 4, 2015 (date) implantation surgery:

  X   Zimmer M/L Taper  
       Zimmer M/L Taper with Kinectiv Technology

9. Plaintiff had the following right hip components explanted on or about September 26, 2018 (date), at Beverly Hospital, 85 Herrick Street, Beverly, MA 01915 (medical center and address) by Dr. Hugh O'Flynn.

  X   Versys femoral head  
       Zimmer M/L Taper  
       Zimmer M/L Taper with Kinectiv Technology

*[Cross out if not applicable.]*

10. ~~Plaintiff will have the right hip components at issue explanted on or about \_\_\_\_\_, at \_\_\_\_\_ (medical center and address) by Dr. \_\_\_\_\_.~~

*[Cross out if not applicable.]*

11. ~~Plaintiff has not yet scheduled a surgery for explantation of the right hip components at issue.~~ *[Cross out if not applicable.]*

**ALLEGATIONS AS TO LEFT-SIDE IMPLANT/EXPLANT SURGERY(IES): [CROSS OUT IF NOT APPLICABLE]**

12. Plaintiff was implanted with a Versys Femoral Head in his/her left hip on or about February 4, 2015 (date), at the Beverly Hospital, 85 Herrick Street (medical center and address), in Beverly, Massachusetts, by Dr. Hugh O'Flynn.

13. Plaintiff was implanted with the following femoral stem during the February 4, 2015 (date) implantation surgery:

  X   Zimmer M/L Taper  
       Zimmer M/L Taper with Kinectiv Technology

14. Plaintiff had the following left hip components explanted on or about April 10, 2018, at Beverly Hospital, 85 Herrick Street, Beverly, MA 01915 (medical center and address)

by Dr. Hugh O'Flynn:

- X   Versys femoral head  
       Zimmer M/L Taper  
       Zimmer M/L Taper with Kinectiv Technology

15. ~~Plaintiff will have the left hip components at issue explanted on or about~~  
~~\_\_\_\_\_~~, at ~~\_\_\_\_\_~~ (medical center and address) by Dr. ~~\_\_\_\_\_~~.  
~~[Cross out if not applicable.]~~

~~16. Plaintiff has not yet scheduled a surgery for explantation of the left hip components~~  
~~at issue.~~ ~~[Cross out if not applicable.]~~

**ALLEGATIONS AS TO INJURIES**

17. (a) Plaintiff claims damages as a result of (check all that are applicable):

- X   INJURY TO HERSELF/HIMSELF  
       INJURY TO THE PERSON REPRESENTED  
       WRONGFUL DEATH  
       SURVIVORSHIP ACTION  
  X   ECONOMIC LOSS

(b) ~~Plaintiff's spouse claims damages as a result of (check all that are~~  
~~applicable):~~ ~~[Cross out if not applicable.]~~

- X   LOSS OF SERVICES  
  X   LOSS OF CONSORTIUM

18. Plaintiff has suffered injuries as a result of implantation of the Devices at issue manufactured by the Defendants as shall be fully set forth in Plaintiff's anticipated Amended Complaint if chosen for bellwether consideration, as well as in Plaintiff's Fact Sheet and other

responsive documents provided to the Defendant and are incorporated by reference herein.

19. Plaintiff has suffered injuries as a result of the explantation of the Devices at issue manufactured by the Defendants as shall be fully set forth in Plaintiff's anticipated Amended Complaint if chosen for bellwether consideration, as well as in Plaintiff's Fact Sheet and other responsive documents provided to the Defendant and are incorporated by reference herein.

*[Cross out if not applicable.]*

20. Defendants, by their actions or inactions, proximately caused the injuries to Plaintiff(s).

21. Due to the nature of the defect, Plaintiff(s) could not have known that the injuries he/she suffered were as a result of a defect in the Devices at issue at the time they were implanted or for any period afterwards until the defect was actually discovered by Plaintiff(s).

**CASE-SPECIFIC ALLEGATIONS AND THEORIES OF RECOVERY**

22. The following claims and allegations are asserted by Plaintiff(s) and are herein adopted by reference from the Master Long Form Complaint (check all that are applicable):

- |              |  |
|--------------|--|
| <u>  X  </u> | COUNT I - NEGLIGENCE;  |
| <u>  X  </u> | COUNT II - NEGLIGENCE PER SE;                                |
| <u>  X  </u> | COUNT III - STRICT PRODUCTS LIABILITY - DEFECTIVE DESIGN;    |
| <u>  X  </u> | COUNT IV - STRICT PRODUCTS LIABILITY – MANUFACTURING DEFECT; |
| <u>  X  </u> | COUNT V - STRICT PRODUCTS LIABILITY- FAILURE TO WARN;        |
| <u>  X  </u> | COUNT VI - BREACH OF EXPRESS WARRANTY;                       |
| <u>  X  </u> | COUNT VII- BREACH OF WARRANTY AS TO MERCHANTABILITY;         |

X   COUNT VIII - BREACH OF IMPLIED WARRANTIES;  
  X   COUNT IX - VIOLATION OF CONSUMER PROTECTION  
LAWS  
  X   COUNT X –NEGLIGENT MISREPRESENTATION  
  X   COUNT XI- FRAUDULENT CONCEALMENT  
  X   COUNT XII - UNJUST ENRICHMENT  
  X   COUNT XIII – LOSS OF CONSORTIUM  
       COUNT XIV – WRONGFUL DEATH  
       COUNT XV- SURVIVAL ACTION

In addition to the above, Plaintiff(s) assert the following additional causes of action under applicable state law:

  X   PUNITIVES DAMAGES  
  X   OTHER: Mass. Gen. Laws Ann. Ch. 93A et seq.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff(s) pray for judgment against Defendants as follows:

1. For compensatory damages requested and according to proof;
2. For all applicable statutory damages of the state whose laws will govern this action;
3. For an award of attorneys' fees and costs;
4. For prejudgment interest and costs of suit;

5. Exemplary damages;
6. For restitution and disgorgement of profits; and,
7. For such other and further relief as this Court may deem just and proper.

**JURY DEMAND**

Plaintiff(s) hereby demand(s) a trial by jury as to all claims in this action.

Respectfully submitted,  
**WEITZ & LUXENBERG, P.C.**  
*Counsel for Plaintiffs*

Date: July 5, 2019

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